IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7230 of 1998

For Approval and Signature:

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

UNION OF INDIA - Petitioner(s)
Versus
KANTILAL RATILAL DHAKAN - Respondent(s)

==========

Appearance :
Mr.Y.N.Ravani, Addl.Central Government Standing Counsel for the petitioner.

None for the respondent

==========

CORAM : THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 17/02/2006

ORAL JUDGMENT

1. A short, but pertinent, issue is involved for determination in the present writ petition, filed by the Union of India (petitioner). The petitioner has challenged the order passed by the Labour Court at Junagadh in Industrial Employment (Standing Orders) Application No.73 of 1998 dated 13.4.1998, whereby, the Labour Court has stayed the proposed order of transfer of the respondent from Visavadar to any other Post Office.

2. The impugned order dated 13.4.1998 passed by the Labour Court is an ad interim order, the operation of which has already been stayed by this court on 2.11.1998.

3. Shri Y.N.Ravani, learned Addl.Central Government Standing Counsel appearing for the petitioner has contended that earlier vide order dated 14.5.1997 the respondent, who was working as Sub Post Master (UNA) was transferred from Visavadar. The respondent approached the Central Administrative Tribunal (hereinafter referred to as “CAT”) vide O.A.Nos.305 of 1997 and 490 of 1997, which granted the interim

relief by directing that status quo be maintained. Ultimately, the CAT directed that the matter be referred to the Post Master General, by making a representation. The Post Master General allowed the respondent to continue for one more rotational year i.e. 1997-98, vide his order dated 18.9.1997. Subsequently, the respondent preferred an application before the Labour Court at Junagadh, being I.E.S.O.No.14/97. The Labour Court directed to maintain the status quo in the matter. This order of status quo was extended from time to time. The petitioner filed the reply before the Labour Court, taking the preliminary objection that the Labour Court did not have the jurisdiction to entertain the matter or pass orders. The respondent subsequently withdrew the Case No.IESO No.14/97 on 13.4.1998. On the very same day i.e. 13.4.1998, the respondent filed a fresh case being IESO No.73/98, whereupon the Labour Court passed the impugned order dated 13.4.1998, which has been challenged in the present petition.

4. I have heard Shri Y.N.Ravani, learned Addl.Central Government Standing Counsel and gone

through the material on record. Shri Y.N.Ravani submits that the Labour Court had no jurisdiction to pass the impugned order and the same requires to be vacated, being a nullity in law. In support of this contention he submits that the Labour Court should not have entertained the matter, in contravention of the provisions of the Industrial Employment (Standing Orders) Act, 1946. Further he urged that in view of Section 14 of the Administrative Tribunals Act, 1985, the Labour Court has no jurisdiction to entertain the matter and the impugned order passed by it is without jurisdiction and, therefore, void. It has also been contended that the Postal Department is not an industry and the employees of the Postal Department are not workmen, in view of law laid down by the Supreme Court in **Sub-Divisional Inspector of Post, Vaikam and others v. Theyyam Joseph, reported in JT 1996(2) SC 457.** Certain other grounds have also been urged in the petition. However,this court does not propose to go into the merits of the case since the preliminary and most important issue to be determined is whether the Labour Court had the jurisdiction to entertain the matter with regard to the transfer of

the respondent, who was Sub Post Master in the Postal Department of the Government of India, or not?

5. At the first instance, the provisions of Section 13 (B) of Industrial Employment (Standing Orders) Act, 1946, need to be scrutinized. The respondent has approached the Labour Court under the provisions of the Industrial Employment (Standing Orders) Act, 1946. Section 13(B) of the Industrial Employment (Standing Orders) Act, reads as under:-

> "Act not to apply to certain industrial establishment.-
>
> Nothing in this Act shall apply to an industrial establishment in so far as the workmen employed therein are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply."

6. A bare reading of this Section makes it clear that this Act will not apply to any industrial establishment insofar as the workmen employed therein

are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, will apply.

7. Admittedly, the respondent is an employee of the Postal Department of the Central Government and all the above Rules applying to civil posts under the Union, (except those applicable to Railways and civilians in Defence service) will apply to him. Therefore, the provisions of the Industrial Employment (Standing Orders) Act, 1946 will not be applicable in the case of the respondent. The Labour Court has erred in entertaining the matter under the provisions of this Act and by granting status quo with regard to the transfer of the respondent vide impugned order dated 13.4.1998.

8. In this context, it will be relevant to refer to the provisions of the Administrative Tribunals Act, 1985. Section 14 thereof deals with the jurisdiction, power and authority of the Central Administrative Tribunal, and the same is reproduced herein-below:

> "14. Jurisdiction, powers and authority of the Central Administrative Tribunal.-
>
> (1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to-
>
> (a) recruitment, and matters concerning recruitment, to any All-India service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;
>
> (b) all service matters concerning-
>
> (i) a member of any All-India Service; or
>
> (ii) a person (not being a member of an All-India Service or a person referred to in clause (c) appointed to any civil service of the Union or any civil post under the Union; or
>
> (iii) a civilian not being a member of an All-India service or a person referred to in clause (c) appointed to any defence services or a post connected with defence,
>
> and pertaining to the service of such

member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the Control of the Government of India or of any corporation or society owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a state Government or any local or other authority or any corporation or society or other body, at the disposal of the Central Government for such appointment.

Explanation,- For the removal of doubts, it is hereby declared that references to “Union” in this sub-section shall be construed as including references also to a Union territory.

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations or societies owned or controlled by Government, not being a local or other authority or corporation or society controlled or owned by a State Government;

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dated may be so specified under this sub-section in respect of different classes of or different categories under any class of, local or other authorities or corporations or societies.

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall

> also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation or society, all the jurisdiction, powers and authority exercisable immediately before that date by all courts except the Supreme Court in relation to-
>
> (a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation or society; and
>
> (b)all service matters concerning a person other than a person referred to in clause (a) or clause (b) of sub-section (1) appointed to any service or post in connection with the affairs of such local or other authority or corporation or society and pertaining to the service of such person in connection with such affairs.”

9. A bare reading of this provision makes the legal position crystal clear. There is no dispute regarding the fact that the respondent is holding a civil post under the Union of India, being an employee of the Postal Department. The matter regarding his transfer is, therefore, a service matter since it pertains to service in connection with the affairs of the Union. Therefore, the matter pertaining to his transfer could only have been entertained by the Central Administrative Tribunal, which has the express jurisdiction in this regard and not by the Labour Court. The Labour Court has

committed a patent error in not only entertaining the matter but also by issuing the impugned order of status quo dated 13.4.1998 which is totally without jurisdiction.

10. The law on this point is well settled and has been lucidly enunciated by the Supreme Court in **(2005)7 SCC 791 (Harshad Chiman Lal Modi v. DLF Universal Ltd.),** the relevant paragraphs of which are reproduced herein below:-

> "30. We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i) territorial or local jurisdiction; (ii) pecuniary jurisdiction; and (iii) jurisdiction over the subject-matter. So far as territorial and pecuniary jurisdiction are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject-matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject-matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is a nullity.
>
> (emphasis supplied)
>
> 31.In Halsbury's Laws of England, (4th Edn.), Reissue, Vol.10, para 317, it is stated:
>
> 317. Consent and waiver.- Where, by reason of any limitation imposed by a statute, charter

> or commission, a court is without jurisdiction to entertain any particular claim or matter,neither the acquiescence nor the express consent of the parties can confer jurisdiction upon the court, nor can consent give a court jurisdiction if a condition which goes to the root of the jurisdiction has not been performed or fulfilled. Where the court has jurisdiction over the particular subject-matter of the claim or the particular parties and the only objection is whether, in the circumstances of the case, the court ought to exercise jurisdiction, the parties may agree to give jurisdiction in their particular case; or a defendant by entering an appearance without protest, or by taking steps in the proceedings, may waive his right to object to the court taking cognizance of the proceedings. No appearance or answer, however, can give jurisdiction to a limited court, nor can a private individual impose on a judge the jurisdiction or duty to adjudicate on a matter. A statute limiting the jurisdiction of a court may contain provisions enabling the parties to extend the jurisdiction by consent."
>
> 32. In Bahrein Petroleum Co. this Court also held that neither consent nor waiver nor acquiescence can confer jurisdiction upon a court, otherwise incompetent to try the suit. It is well settled and needs no authority that "where a court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing". A decree passed by a court having no jurisdiction is non est and its invalidity can be set up whenever it is sought to be enforced as a foundation for a right, even at the stage of execution or in collateral proceedings. A decree passed by a court without jurisdiction is a coram non judice."

11. The impugned order dated 13.4.1998 passed by the Labour Court is clearly without jurisdiction and as such, is a nullity, since the lack of inherent

jurisdiction to pass the order goes to the very root of the matter. Such an order cannot be allowed to stand.

12. The ground taken by the petitioner that the Postal Department is not an industry and therefore, the respondent is not a workman, in view of the Judgment of the Supreme Court in Sub-Divisional Inspector of Post, Vaikam and others v. Theyyam Joseph (Supra) cannot be accepted, since it is no longer good law. The law laid down by a 2 Judge Bench of the Supreme Court in Theyyam Joseph's case (Supra) has been over ruled by a 3 Judge Bench in **General Manager, Telecom v. A.Srinivasa Rao (1997) 8 SCC 767,** since Theyyam Joseph's case did not follow the ratio laid down in the 7 Judge Bench decision i.e. **Bangalore Water Supply and Sewerage Board v. A. Rajappa (1978) 2 SCC 213.** In view of this legal position, this contention of the petitioner that the Postal Department is not an industry and the respondent, not being a workman, the Labour Court could not have entertained his case, cannot be accepted.

13. However, as discussed above, the Labour Court

did not have the jurisdiction to entertain the application of the respondent since the respondent, holding civil post under the Union of India, could only have approached the Central Administrative Tribunal in the matter of his transfer, as per the provisions of Section 14 of the Administrative Tribunals Act, 1985. The Labour Court has taken upon itself the exercise of a jurisdiction which it does not possess. The impugned order is nothing more than a nullity since the Court passing it lacked the inherent jurisdiction to do so. Accordingly, the impugned order dated 13.4.1998 is quashed and set aside. The writ petition is allowed and rule is made absolute. No order as to costs.

(Smt.Abhilasha Kumari,J)

arg